

Exhibit 35

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. D-1-GN-18-006623

SCARLETT LEWIS) IN THE DISTRICT COURT
Plaintiff)
VS.)
ALEX E. JONES, INFOWARS,) TRAVIS COUNTY, TEXAS
LLC, AND FREE SPEECH)
SYSTEMS, LLC)
Defendants) 53RD JUDICIAL DISTRICT

EXCERPT FROM HEARING ON MOTION FOR SANCTIONS

On the 3rd day of April, 2019, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable Scott H.
Jenkins, Judge presiding, held in Austin, Travis County,
Texas;

Proceedings reported by machine shorthand.

A P P E A R A N C E S

FOR THE PLAINTIFF:

MARK D. BANKSTON
SBOT NO. 24071066
WILLIAM OGDEN
SBOT NO. 24073531
KASTER, LYNCH, FARRAR & BALL
1010 Lamar, Suite 1600
Houston, Texas 77002
(713) 221-8300

FOR THE DEFENDANTS:

ROBERT BARNES (*Admitted Pro Hac Vice*)
BARNES LAW
601 South Figueroa Stree, Suite 4050
Los Angels, California 90017
(213) 330-3341

RICHARD E. YOUNG
SBOT NO. 22204800
GLAST, PHILLIPS & MURRAY
14801 Quorum Drive, Suite 500
Dallas, Texas 75254
(972) 419-8300

I N D E X**VOLUME 1****EXCERPT FROM HEARING ON MOTION FOR SANCTIONS****APRIL 3, 2019**

	<u>Page</u>	<u>Vol.</u>
Argument by Mr. Barnes.....	4	1
Further Argument by Mr. Bankston.....	39	1
Rule 11 Agreement.....	53	1
Adjournment.....	54	1
Court Reporter's Certificate.....	55	1

HEARING EXCERPT

THE COURT: All right. You may proceed.

MR. BARNES: Thank you, Your Honor. A few points sort of overarching as to the motion, Mr. -- the Enoch firm, Mr. Young, will be making the legal argument. I just want to go over the factual history and answer some of the Court's inquiries that you previously made.

At the outset, I do believe that a First Amendment defense, which is what the Texas Citizens Participation Act is all about, as it says in Chapter 27, it's meant to protect issues involving the expression of certain constitutional rights, that striking the motion in its entirety would be a severe or death penalty sanction. That word may be used more commonly in Texas than other jurisdictions maybe because of what happened at SMU several years ago. But I do think that's the case. This is a fundamental First Amendment case that is going to make new law for the country one way or the other.

THE COURT: What should I do then about the failure of defendants to open the spigot and have the production of documents start flowing? I find that disturbing. I'm not saying that was your decision. We'll probably never know whose decision it was. But

1 somebody decided to slow boat these documents, and they
2 got a ton of them delivered after the depositions.
3 That's very disconcerting. What should I do about that?

4 MR. BARNES: Two things, Your Honor. I do
5 have a further explanation, and you will know exactly
6 how everything happened because I'm going to explain it
7 to you all the way through. And the -- and as to
8 potential remedies, what I proposed actually to
9 plaintiffs other than, you know, making people available
10 for depositions without cost, paying for additional
11 depositions and all of that once he identified any
12 issues that he needed additional depositions on with
13 discovery --

14 THE COURT: But at some point that
15 becomes, I mean -- and we all know this. I mean, we --
16 there's only so much trial lawyers can do. You know,
17 there's seven days in the week and you've got to sleep.
18 And, you know, at some point that is an unfair burden
19 when someone's under a time deadline to say, well, why
20 don't we -- let's get a redo; let's do a redo now; in
21 light of our slow production, just take the depositions
22 again. I appreciate that you're willing to go to
23 Houston to do it. I read that. But, you know, at some
24 point that's just -- that's not fair.

25 MR. BARNES: I understand the Court's

1 concern, Your Honor. And in that regard, the other
2 option I proposed is that if he identified -- as I see
3 the motion, our main argument is about whether the
4 complaint states a cause of action on its face. It's
5 not so much a fact question that goes to the intent
6 question. My understanding from the Court's order is
7 that all of the discovery really relates to only one
8 component of the motion and that is whether or not there
9 was actual malice under the First Amendment standard as
10 applied to intentional infliction of emotional distress
11 claims and whether there was intent to harm under the
12 intentional infliction of emotional distress claim.

13 What I told plaintiff's counsel at the
14 break was that if it is the case when he reviews this
15 that he feels he cannot adequately review it for
16 purposes of determining the intent question, we're
17 willing to, solely for the purposes of this motion,
18 withdraw our part of the motion that deals with their
19 prima facie proof and say for the purpose of this motion
20 only we stipulate that the intent aspect is met, that
21 the actual -- we're not disputing actual malice or
22 intent; we'll only dispute whether or not someone can
23 bring an intentional infliction of emotional distress
24 claim when they have never been individually identified
25 by any statement.

1 THE COURT: So you're going to limit your
2 motion to dismiss -- is this the first time they've ever
3 heard this? You're going to limit your motion to
4 dismiss to a pure question of law whether such a claim
5 can be brought as an intentional infliction claim under
6 the law.

7 MR. BARNES: Yes, Your Honor.

8 THE COURT: And you will concede today,
9 and you are for the record, that for the purpose of
10 deciding the motion to dismiss the Court can assume that
11 the statements made by Alex Jones were done with malice,
12 that is to say, he knew they were false and said them
13 anyway.

14 MR. BARNES: We're not disputing the
15 intent issue as to this motion, that's correct,
16 Your Honor.

17 THE COURT: So he intended to make false
18 statements. The question is, can you take that intent
19 to make false statements and can an individual bring a
20 claim for intentional infliction on those facts?

21 MR. BARNES: Precisely, Your Honor. In
22 other words, if the case is -- when someone has not been
23 personally mentioned -- in the defamation context they
24 call it colloquium, which the word colloquial comes
25 from. And if no statement is ever made about that

1 person, can that person bring a claim for defamation or
2 intentional infliction of emotional distress when they
3 have never been mentioned? That --

4 THE COURT: Well, what you're saying now
5 means they don't even need to put on any affidavits or
6 anything on the hearing on March -- on May 2nd; they
7 just need to make legal briefing.

8 MR. BARNES: Precisely. That's correct,
9 Your Honor.

10 THE COURT: And it'll be granted or denied
11 based upon that legal argument.

12 MR. BARNES: Precisely.

13 THE COURT: That's really interesting. Is
14 this the first time -- you can tell in my old age I find
15 this maddening that people don't talk the way they used
16 to. Is this the first time they're hearing this from
17 you?

18 MR. BARNES: I mentioned it during the
19 break, Your Honor. I mean, based on the Court's
20 comments, I thought -- I had thought about this solution
21 all the way back. If I had personally brought the
22 motion, I would have brought it differently. There was
23 just a difference. I wasn't involved at that point,
24 Your Honor. Because to me when I looked at it, it was
25 just a straightforward legal issue. I was also trying

1 to figure out other ways to get a continuance, whether
2 we could do the motion nunc pro tunc, but that didn't
3 work out.

4 THE COURT: Well, in fairness to
5 Mr. Enoch, he made those arguments on the discovery
6 hearing saying, Judge, you should not give discovery
7 because they can't even bring this claim. That argument
8 was actually made. The argument you're just making now
9 was made, but he was not ready to concede at that point
10 just assume it's malice, we're going to live or die on
11 the law.

12 MR. BARNES: Precisely. And that's what I
13 would have done.

14 THE COURT: And he could have said that
15 then and we wouldn't have even had any of this
16 discovery, right?

17 MR. BARNES: Yes, Your Honor, absolutely.

18 THE COURT: Because we would not have
19 needed it.

20 MR. BARNES: Yes, Your Honor.

21 THE COURT: That's your argument now.

22 MR. BARNES: Yes.

23 THE COURT: I see. How interesting.

24 MR. BARNES: And again, it's just to
25 facilitate the resolution of the matter one way or the

1 other.

2 THE COURT: Why this dramatic change today
3 on the break in this motion? Because we could have done
4 that two months ago and teed up the motion to dismiss, I
5 don't know, for today.

6 MR. BARNES: It was always my position,
7 Your Honor. In fact, and it has been broached in
8 Connecticut, so the same pitch has been made, that to me
9 the real big issue here isn't the factual issue. That's
10 going to be decided how it is. To me the uniqueness of
11 this from a constitutional legal perspective is can this
12 kind of claim assuming certain facts to be true --
13 assuming all the facts alleged in the complaint are true
14 and are provable true, can that constitute a claim given
15 the First Amendment protections? And from my
16 understanding looking at it, this kind of claim is not
17 one. This has not been tested yet through the court
18 system.

19 THE COURT: And I'm sorry to pick on you
20 because I appreciate what you're saying because that
21 seems to be simplifying this matter greatly. I'm
22 just -- it kind of taps into what counsel started off
23 saying at the beginning of his argument; I don't know
24 who's in charge over there. And what you just did on
25 the record now kind of makes me -- I have to ask you,

1 and, of course, this is getting into attorney-client, so
2 the answer may be I can't tell you, but why this sudden
3 dramatic 180-degree turn in the position taken by
4 defendants on how to posture this case for this motion?

5 MR. BARNES: So it's based on that I'm
6 running this case now once I was admitted *pro hac*, so
7 that was the only delay on that side of the aisle. And
8 as to that, Your Honor, different counsel have
9 different -- I understand most lawyers want to assert
10 every defense.

11 THE COURT: But you took over when? When
12 did you -- when were you in command of the ship?

13 MR. BARNES: I could control the case once
14 I was admitted *pro hac*. I was brought in initially as
15 in-house general counsel.

16 THE COURT: That's okay. When did you
17 take over command of the ship to basically guide the
18 client to do exactly what you just did in court?

19 MR. BARNES: I mean, formally yesterday.
20 So the -- I've been involved all the way through, and I
21 was going to go through all the details of that.

22 THE COURT: So you were not in a position
23 to do what you just did until yesterday?

24 MR. BARNES: That's -- yeah, until I was
25 granted *pro hac*, yes, Your Honor, short answer.

1 THE COURT: And I don't mean to pick on
2 you because I appreciate the change. It's just, golly,
3 we've spent an awful lot of time getting to this point
4 only to find out you didn't even need the discovery; you
5 can just presume all of this.

6 MR. BARNES: Well, absolutely, Your Honor.
7 That's what I would have proposed from the get-go. So
8 because --

9 THE COURT: It's just nobody listened
10 until I guess yesterday.

11 MR. BARNES: Other -- I mean,
12 respectfully, other counsel had their -- they believed
13 it was best to defend on all components.

14 THE COURT: Okay.

15 MR. BARNES: It was proposed in
16 Connecticut and the plaintiffs just turned it down in
17 Connecticut.

18 THE COURT: Okay. Well, I mean, I respect
19 that. Lawyers have different ways they wish to -- or
20 advise the client to proceed.

21 MR. BARNES: Yes, sir.

22 THE COURT: Okay.

23 MR. BARNES: And I think it's because in
24 part Mr. Enoch wasn't aware of some of the complexity we
25 were going to deal with in discovery, and so I'll go

1 through that history.

2 So to be clear, all of the defendants
3 Mr. Jones, Free Speech Systems -- I'll explain what
4 InfoWars is; it's a paper entity, but I'll explain that
5 in further detail -- produced all of the discovery that
6 was requested on February 24th to the Enoch firm. On
7 February 25th they started producing and produced about
8 6500 documents. I believe plaintiff's counsel referred
9 to it as, quote, an enormous amount of information in
10 his motions at that time.

11 Then what happened the next day was
12 plaintiff's counsel in Texas and later plaintiff's
13 counsel in Connecticut, because they're sharing
14 documents back and forth, said that the production of
15 that amount of documents was a waiver for everybody as
16 to everything that could ever exist. And the particular
17 concern was not about internal documents. As I think
18 plaintiff's counsel is aware from interviewing
19 employees -- ex-employees of InfoWars and of the
20 defendants, Mr. Jones almost never uses email. He
21 doesn't even have a corporate email account. He comes
22 out of the Talk Radio Network/Access TV world. He has a
23 personal email account that he only uses for online
24 banking and things of that nature. He doesn't respond
25 to lawyer emails by email. He's just not an email

1 person at all. There's many reasons for that.
2 Partially it's a personal preference. It's the nature
3 of how he grew up in talk radio. The second part is if
4 he was accessible by email, he would get bombarded.

5 InfoWars already receives approximately
6 one million external emails each year, most of them all
7 from third parties, often, you know, different people.
8 So the ability for him to filter information and be
9 reachable and to reach out to people he needs to talk
10 to, he needs to not be available by email. It needs to
11 be in person, on the phone, or through a person in
12 person.

13 The way InfoWars operates at the company
14 is entirely verbal. They get together. They have a
15 conference in the morning and then they do work and do
16 their own research, then they print out things, and then
17 they talk. It's basically a network access TV show
18 turned talk radio show that's done online.

19 THE COURT: Excuse me just a second.

20 *(Discussion off the record*
21 *with court staff)*

22 MR. BARNES: So the effect of it is that
23 the total amount of email -- so here's how the search
24 was done back in February. The IT people and the
25 production people both started looking for videos,

1 articles, and for all responsive documents. The nature
2 of it is there was over nine million emails to be
3 searched. They did sort of like what Google does. What
4 Google does is they do like a spider -- what they call
5 spidering. It does a web -- a search of the web. They
6 did a search of all of the entire computer servers and
7 everybody's emails. That produced over 100,000
8 documents that could respond to the various search
9 terms.

10 So he talks about crisis actors and some
11 other components. What it is is his request was sort of
12 generic in some of the language, so it said any
13 communication that deals with the notion that something
14 is -- that the shooting was either staged or synthetic,
15 phony or manipulated. In Connecticut they had reduced
16 those to specific search terms, like crisis actor, like
17 Sandy Hook, like Newtown. So because we're producing
18 for both and they're sharing with each other, that's why
19 we were just making sure everything was produced for
20 both, but that produced a massive volume of documents
21 and information.

22 So what Mr. Enoch relayed to the
23 plaintiffs on February 25th is he anticipated that being
24 the ruling. When they came back and said, you know
25 what, you've just waived all of your clients' rights and

1 any third party rights to privacy or to privilege under
2 the shield, and they said the same thing in Connecticut,
3 that is when -- I had been brought in as outside general
4 counsel at that point. I said, well, hold on, in
5 California we can get sued by any person we release
6 their email from if it's not properly done. So I said,
7 can you ask both plaintiff's counsel in Connecticut and
8 Texas, please withdraw the waiver argument and we'll
9 keep getting rolling production to you.

10 THE COURT: Now you really -- sorry, that
11 got my attention. In California you can get sued for
12 releasing an email when there's no expectation of
13 privacy in the email? I mean, how can anybody have
14 expectation of privacy -- that's my question -- in any
15 email? You know, it's like a cockroach. It never dies.

16 MR. BARNES: It's starting to expand over
17 the past 15 years. So sometimes the expectation of
18 privacy is rooted in a contractual arrangement. So
19 here, for example, everybody that works at InfoWars has
20 a non-disclosure agreement that effectively protects
21 their emails from external exposure outside of the court
22 order process. In California and some other
23 jurisdictions, they interpret that as entitling them to
24 an expectation of privacy in their email from third
25 party disclosure.

1 The second one goes actually to what the
2 Court's ultimate order was. If a party sent
3 something -- a third party sends something to you and
4 they either affirmatively request it or believe it's
5 confidential --

6 THE COURT: Well, that I understand. If
7 there's some -- which actually I wove into my order; I
8 tried to --

9 MR. BARNES: Yes, Your Honor.

10 THE COURT: -- on the reporter's
11 privilege, is if there's some expression of an
12 expectation of privacy, I understand that. That was the
13 line I was trying to draw.

14 MR. BARNES: Exactly. And so because
15 a lot of their emails came through the tips line,
16 whistleblower line, source line, generic emails from
17 third parties, figuring out if we disclose those, can
18 someone sue was my concern, so I was like at least say
19 that whatever we produce is not a waiver as to those
20 other potential ones. Both plaintiffs' lawyers in Texas
21 and Connecticut said they refuse to withdraw their
22 waiver claim. So that frankly just put a panic for me.
23 I was like, well, hold on a second, we need to make sure
24 that whatever we produce doesn't lead to third party
25 lawsuit claims against us because now we're disclosing

1 something that we didn't at the time we reviewed and
2 that we've actually waived by producing anything else.

3 THE COURT: But even if somebody had a
4 desire to maintain privacy, you can't use private
5 communication -- of course, you've just basically -- but
6 ultimately when you try this case if you come to a
7 trial, you can't say, well, I got this information, it
8 formed the basis for my sincere belief that there was a
9 question about whether these children were shot, but I
10 can't tell you what it is.

11 MR. BARNES: Oh, you're absolutely right.

12 THE COURT: I can't share it with you.

13 MR. BARNES: No doubt.

14 THE COURT: I mean, you can't use that.
15 You can't do sword and shield that way, right?

16 MR. BARNES: Absolutely. That's
17 absolutely right.

18 THE COURT: Okay. And you heard counsel's
19 expression of concern that he's going to be surprised.
20 You just took that away from him a few minutes ago.

21 MR. BARNES: Absolutely.

22 THE COURT: But at the trial of this case,
23 you can't do it then either, right?

24 MR. BARNES: Absolutely not. If we
25 withhold anything under privilege or privacy grounds, we

1 cannot use that as affirmative evidence at trial.

2 THE COURT: Exactly.

3 MR. BARNES: Absolutely, Your Honor.

4 THE COURT: So he needn't worry even at
5 the final trial that you would do that because you
6 can't.

7 MR. BARNES: No, exactly.

8 THE COURT: And you have to supplement
9 your discovery as soon as you know it exists, and surely
10 you know it exists right now --

11 MR. BARNES: Absolutely.

12 THE COURT: -- as we sit here today.

13 MR. BARNES: Oh, yes, absolutely.

14 THE COURT: There we go. So he knows
15 exactly what was the basis for making these statements.
16 He's known it since he made them. And that information,
17 assuming -- has already been provided to opposing
18 counsel or not? Because until today you were -- you
19 tell me you were compliant with discovery. Counsel's
20 worried that you haven't given him everything that you
21 would be using at this hearing that you're now not going
22 to need to use, but you already have. You're telling me
23 everything's over in his office. Everything that Alex
24 Jones ever relied on to form the basis to make the
25 statements he made is in plaintiff's counsel's office.

1 Is that --

2 MR. BARNES: That's my understanding,
3 absolutely, Your Honor, from the deposition -- I mean,
4 what he testified from the deposition, he didn't rely on
5 emails for anything that he -- for his opinions.

6 THE COURT: Just verbal communications.

7 MR. BARNES: Absolutely.

8 THE COURT: Informal verbal
9 communications.

10 MR. BARNES: Or something that he read or
11 saw.

12 THE COURT: Okay. So counsel knows
13 everything upon which Alex Jones relied to make any
14 statement he ever made on the air about Sandy Hook,
15 right?

16 MR. BARNES: Absolutely, correct.

17 THE COURT: Okay. I always like
18 transparency, and I like people to confirm that,
19 you know, on behalf of their clients they have complied,
20 and that's good.

21 MR. BARNES: Yes, Your Honor. And I'll
22 provide some context on that as to why there's --
23 another reason why there's no internal emails on the
24 aspects of this. Aside from the fact they don't use
25 them for broadcast purposes and they don't -- for

1 planning broadcasts or publications, they don't use
2 internal emails very often at all. It's almost all
3 external communication.

4 The second part of that is there was about
5 90 percent of what InfoWars published -- because there
6 was a difference of opinion that he explored in the
7 deposition. InfoWars' editor was Paul Joseph Watson.
8 He always believed Sandy Hook was a real event. He said
9 so. That's why 90 percent of what Free Speech Systems
10 published after the shooting was that Sandy Hook was a
11 real event.

12 So you had essentially the opinions of the
13 editor that Sandy Hook was a real event, argued that
14 repeatedly and argued it through InfoWars and its
15 publications and broadcasts. About two years after
16 Sandy Hook, Alex Jones for a period of time doubted
17 whether Sandy Hook was a real event. It happened over
18 about six months. But it was a small minority of what
19 he ever talked about in Sandy Hook. And Sandy Hook was
20 less than 1/100th of 1 percent of what InfoWars ever
21 broadcast. That's why whenever we did the discovery
22 requests, we were going to get a lot of stuff that has
23 nothing to do with whether or not Sandy Hook was a real
24 event.

25 I did apprise plaintiff's counsel of that

1 on March 7th after the hearing. And I originally asked
2 him, I said, well, if you still need the discovery, if
3 you can give me a week to get through it all to make
4 sure the confidentiality is protected, then let's move
5 the depositions to the following week, the 18th through
6 the 20th. Initially he was amenable to that. He got
7 back to me over the weekend and said that wouldn't work
8 with his schedule. So for various reasons I didn't
9 receive a copy of the court order until the 13th.
10 Mr. Enoch's firm thought they forwarded it to me but
11 they hadn't. So when I'm coming in to do the
12 depositions on 14th and the 15th, I find out, okay, the
13 Court's order.

14 During that time period I had done a lot
15 of legal research to make sure I wasn't creating
16 additional exposure for my client. Again, my client
17 turned everything over back on February 24th. I just
18 didn't want to screw up and have a bunch of stuff that
19 was suddenly waived by disclosing and all of a sudden
20 I've got third parties now that get to sue my client
21 because I screwed up.

22 I researched the Texas shield statute,
23 because one of the questions is who owns the privilege.
24 Does the media company own the privilege or does the
25 person who sends it in own the privilege? There's

1 almost no case law on the statute.

2 Then I looked at the Texas Constitution,
3 which has also applied -- asserted a confidentiality
4 provision to various First Amendment protections under
5 the Granberg (phonetic) doctrine from the U.S. Supreme
6 Court, but the specific issue hadn't come up.

7 THE COURT: We seem to be plowing a lot of
8 new ground in this case.

9 MR. BARNES: Yes, Your Honor. Yes,
10 absolutely. I have spent over 400 hours on this, me and
11 my team. I mean, there's been no effort to hide
12 anything, no effort to delay anything. I was trying to
13 even figure out a way we can nunc pro tunc to delay the
14 hearing, and there just isn't a way to do so
15 procedurally I guess in Texas, so no effort to do any of
16 that.

17 I also had to -- because Connecticut said
18 anything we put in Texas was a release of anything -- a
19 waiver of anything in Connecticut, I had to review
20 Connecticut law also. No precedent, no court
21 adjudication of it either in the constitutional
22 provision or in the statutory provision in Connecticut.
23 Connecticut's a little bit different than Texas.

24 So then I had to review other scholarly
25 articles or other areas where this statute had been

1 interpreted. And there was good argument that basically
2 the Court's ruling is where the law is leaning according
3 to most legal scholars and other precedents that are out
4 there, which is to say we, the media company, own the
5 privilege; we can waive it unless they affirmatively
6 requested confidentiality.

7 So then it was like, okay, so now I can
8 turn back to the emails. We're going to do the
9 depositions on the 14th and the 15th. I'll get right
10 back to the emails to make sure we screen out anybody
11 who had affirmatively requested confidentiality. And I
12 was trying to screen out all this auxiliary stuff
13 because so much of it is you have customer orders.
14 There's a lot of --

15 THE COURT: Slow that down a little bit.
16 You have what?

17 MR. BARNES: I'm sorry. There are
18 customer orders that are -- because it turns out there
19 are a lot of Newtowns. It turns out there's like
20 multiple Sandy Hook towns. Sandy Hook, Kentucky is
21 another town.

22 Also briefly on the legal part, I also
23 made sure we were complying with California law and EU
24 law. Because some of the employees and some of the
25 people who sent information are governed under EU law,

1 in the EU, they do have broad privacy for email
2 communication, and you can get fined if you disclose it
3 without a specific court order on that specific email.
4 So I was making sure that that was something that we
5 could waive under the ways in which they set it at.

6 So after doing that all that and doing the
7 depositions on the 14th -- and during this time period
8 between the 8th and the 18th -- or actually the 8th and
9 the 19th, plaintiff's counsel doesn't tell me he has to
10 have documents or info now to do something. I don't
11 hear from him. So I'm thinking, okay, we'll do the
12 depositions, then I'll get to the documents, get him
13 everything, try to filter out as much as possible, make
14 sure we don't screw up any confidentiality designations.

15 THE COURT: I'm not sure I understand what
16 you just said. And I'm sorry to pick on you again.

17 MR. BARNES: No problem.

18 THE COURT: But it was clear in March he
19 wanted the documents right then, was very upset that the
20 spigot had been turned off. I said turn it back on now
21 today, go ahead and tell your people today, because
22 we've got depositions coming up. So I'm not
23 understanding what you just said that you didn't hear
24 from counsel that he needed this stuff for the
25 depositions. That was apparent.

1 MR. BARNES: Well, yes, Your Honor, but
2 here's my understanding. After the hearing, I said, can
3 we -- let's do the -- let me get the emails to you
4 first, all the documents first, and then move the
5 depositions.

6 THE COURT: Okay.

7 MR. BARNES: When he said he couldn't move
8 the depositions, I figured he was -- because he also
9 mentioned doing bifurcated depositions. So I figured,
10 okay, he's just going to use this time to do depositions
11 on all the stuff he has, will ultimately see that most
12 of the emails are not helpful for deposition purposes,
13 but if he does, we'll just schedule them the beginning
14 of April. So I didn't realize he felt he needed all of
15 the emails before that first set of depositions,
16 Your Honor.

17 And so as soon as the 15th deposition
18 ended, went back to make sure that we had coordinated
19 all the discovery between Connecticut and Texas, made
20 sure it was all uploaded. They had already confirmed
21 that what they had produced on February 24th was
22 everything. I needed to be personally familiar with how
23 they store information, secure information, produce
24 information so I could make these statements to the
25 Court. Did all of that. On the 16th we started

1 uploading it all to a program called Box to share --

2 THE COURT: A program called?

3 MR. BARNES: Box, Your Honor, Box.com. So
4 it's like Dropbox, but the advantage of Box is I wanted
5 to be able to have all the lawyers in Connecticut and in
6 Texas -- and my client authorized bringing in additional
7 lawyers just to help with this process. They all had
8 access to it, could all filter through and do the
9 review, and I was doing that on the 18th and the 19th.

10 And on the 19th I told plaintiff's counsel
11 I think you'll start getting it on the 20th. I did
12 request a blanket confidentiality protection for 21 days
13 because I said I'd rather start giving you stuff, and if
14 it turns out I improperly listed something I was
15 supposed to redact, you'll give me time to do that, but
16 at least you have the documents in the interim, and he
17 agreed to that.

18 And then the morning of the 20th he sent
19 in his draft motion for sanctions. So at that point I
20 stepped back from the process. I realized I was taking
21 too long to get this done. So I reviewed over 100,000
22 documents. I got rid of 30,000, but there was still
23 more to get rid of to filter out. But the decision was
24 made let's just produce, produce, produce, and anything
25 we've got to bring back we'll pull back later.

1 So at that point I also had a trial in
2 Milwaukee that last week of March. So from March 20th
3 until two days ago, Mr. Enoch was in charge of all of
4 that while I was taking care of the other case and was
5 getting as many documents to them as possible. There
6 was never any desire to make it a slow boat. That was
7 not an intention whatsoever. This is an unusual set of
8 complex issues that apply to this particular set of
9 documents in discovery. And that's why I'm willing to
10 make whatever accommodations are needed to make sure
11 that it's not unfair to the other side that this
12 happened to be a very complex process.

13 Let's see. I think that mostly sums it
14 up, Your Honor, in terms of the factual chronology. If
15 the Court has any questions I'm happy to answer. There
16 was never a desire to make anything confusing. What
17 Connecticut counsel was referencing is that this was a
18 unique complex set of issues where -- I'll give you an
19 example. In California, somebody -- a lawyer disclosed
20 documents in a case to the other side that were
21 supposed -- that they determined that document was not
22 supposed to be disclosed under privacy rules. The
23 lawyer got sued, the other lawyer got sued, and the
24 other party got sued, and the Court said it was okay to
25 bring that kind of suit.

1 So it's those kind of -- and because we're
2 a media company that gets all these third party,
3 you know, information in, the question was, could we get
4 sued by someone if we improperly disclosed their name
5 and identity? There was no desire whatsoever to hinder
6 or in any way impair their process. And I'm willing to
7 make whatever accommodations out of my own pocket to
8 have it done because the client turned everything over
9 all the way back from the beginning. I was just trying
10 to make sure I didn't screw up. Thank you, Your Honor.

11 THE COURT: Now before you leave, you
12 heard me question -- we've been spending all of our time
13 on the documents, which is bullet points 1 and 2 --

14 MR. BARNES: Yes, Your Honor.

15 THE COURT: -- in his motion. Bullet
16 point 3 is responsive videos, which no one's really
17 talked about today. Bullet point 4 is failure to
18 prepare a 30(b)(6) deponent, which actually is the wrong
19 rule. It's 199.2(b). But in any event, the corporate
20 rep deponent. You heard me say if they prevail --
21 you've really simplified this today. It's going to be a
22 pure legal argument on May 2nd whether this claim,
23 assuming everything they say is true --

24 MR. BARNES: Absolutely.

25 THE COURT: -- assuming every factual

1 allegation made by the plaintiffs is true, they cannot
2 bring this claim as a matter of law as an intentional
3 infliction of emotional distress claim. I'm sure the
4 answer to this is going to be yes. That would mean if
5 that's -- that's true as to all defendants. So they
6 don't need to worry anymore either about the failure of
7 the defendants to present an InfoWars corporate
8 representative who has a clue about InfoWars as a
9 corporation.

10 MR. BARNES: That's correct, Your Honor.

11 THE COURT: Because you heard me say,
12 golly, if they prevail as to the other defendants, you
13 shouldn't be able to kick out InfoWars because they
14 haven't been able to get information about InfoWars.

15 MR. BARNES: That's correct, Your Honor.

16 THE COURT: But that's taken care of
17 because it's subsumed within the concession, the broad
18 concession you made earlier.

19 MR. BARNES: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. BARNES: And one additional component
22 of that, I had offered the plaintiffs Mr. Jones to be
23 the InfoWars guy.

24 THE COURT: Say that once again. I'm
25 sorry.

1 MR. BARNES: I'm sorry, Your Honor.

2 THE COURT: No, it's me. It's me.

3 MR. BARNES: I'm sorry. Oh, I had offered
4 the plaintiffs prior to the deposition -- what happened
5 is on March the 11th, that Monday, the person who had
6 signed the interrogatories for InfoWars, LLC had -- I
7 can't disclose -- had a medical emergency that he
8 actually was hospitalized for.

9 THE COURT: One of the exhibits was some
10 really generic statement by a doctor, but I saw that.

11 MR. BARNES: I was trying to avoid --
12 there's strict HIPAA limitations on what I can say.

13 THE COURT: I understand.

14 MR. BARNES: But it was a serious
15 emergency. So then I realized we needed to sub them
16 out. So one thing that I offered plaintiff's counsel
17 was I said Alex Jones will be available on the 20th when
18 they were -- to be the InfoWars representative when they
19 were also doing other depositions. They declined.

20 THE COURT: They declined to have Alex
21 Jones be the corporate rep for InfoWars?

22 MR. BARNES: For the -- on the -- yes,
23 Your Honor, on the 20th. They said they wanted to go
24 forward on the 15th. So I assumed, to be honest with
25 you, that they --

1 THE COURT: Let me make sure I understand
2 it, not that this matters anymore in light of your
3 global concession you've made in this hearing. You
4 offered when to make Alex Jones the corporate rep for
5 InfoWars and they declined?

6 MR. BARNES: I believe on -- I believe it
7 was March the 12th, Your Honor.

8 THE COURT: And why did they not want Alex
9 Jones to be the corporate rep for InfoWars? He would be
10 the person most knowledgeable about InfoWars.

11 MR. BARNES: That he would be available
12 for that on the 20th, and they wanted the corporate rep
13 to be deposed on the 15th.

14 THE COURT: Which was the schedule.

15 MR. BARNES: Absolutely.

16 THE COURT: I see. So you weren't
17 offering to make Alex Jones the corporate rep on the
18 date that had already been ordered for the corporate rep
19 deposition. You wanted to postpone it and make him the
20 corporate rep on a later date.

21 MR. BARNES: That's correct, Your Honor.

22 THE COURT: So it was really the timing, I
23 guess I'll hear, to the extent it matters anymore on
24 that.

25 MR. BARNES: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. BARNES: And the way I interpreted it
3 is -- Rob Dew is the director of production for Free
4 Speech Systems. He handles all the -- getting the
5 broadcasts together. So I -- and he was already going
6 to be the person for Free Speech Systems. So I thought,
7 oh, really what they want to get into is how did the
8 broadcast happen, what information was relied on. So
9 that's why I had him designated as InfoWars. And I was
10 the one that confirmed that it's only a paper entity.
11 It was formed many years ago originally with the
12 intentions of putting the website into InfoWars. That
13 never functionally happened. Then the divorce
14 proceeding started, so he's advised just to freeze
15 everything.

16 I think to the degree it makes it easier,
17 we'll probably just make InfoWars, LLC -- rather than
18 dissolve it, just make it a subsidiary of Free Speech
19 Systems. That simplifies it across the board. But
20 there was no goal or objective of trying to not have
21 someone available. I thought they were looking at just
22 the production side, this is the same guy that knows the
23 production side, so I'll produce him. And because he
24 was relying upon me for his information about InfoWars,
25 that was where he didn't go into detail on that aspect.

1 But there was no goal whatsoever to have someone
2 unavailable for those purposes. It's just an entity
3 that only exists on paper, and all Alex Jones could say
4 is the exact same thing. It exists on paper. The
5 lawyers did it.

6 THE COURT: Well, he'd say more than that
7 witness. I mean, the part of the transcript I read, he
8 was clueless about InfoWars.

9 MR. BARNES: Yeah, I mean, he has very
10 limited --

11 THE COURT: The deponent just knew nothing
12 about InfoWars, so it was a pretty meaningless
13 deposition in terms of explicating InfoWars as an
14 entity.

15 MR. BARNES: It only exists on paper, so
16 there's not -- like I didn't know what else --

17 THE COURT: I understand, but he didn't
18 even really explain that, but okay.

19 MR. BARNES: Oh, yeah. That's because I
20 thought they were really having him there for the other
21 purposes.

22 THE COURT: Okay.

23 MR. BARNES: There was, again, no goal or
24 objective to in any way withhold information or anything
25 else. So, again, we'll accommodate the plaintiffs

1 however it needs to be done. I apologize and agree that
2 I didn't get it as fast as I would have loved to have
3 got it as fast done. There was no desire to delay
4 anything. My client produced everything in a timely
5 manner. Just the lawyer review took time because of
6 unusual issues in the case. That's it, Your Honor.

7 THE COURT: Well, once -- you've already
8 kind of taken away any need for sanctions, it seems
9 like, because there's no need for the plaintiff to prove
10 anything. The Court can assume on May 2nd everything
11 they allege is true, so --

12 MR. BARNES: I agree, Your Honor.

13 THE COURT: I'm sorry. Go ahead.

14 MR. BARNES: Yes, Your Honor. I agree
15 that this is a pure question of law that's going to
16 impact cases and the freedom of press and the freedom of
17 speech across the country, what are the limits, what are
18 the First Amendment limits. And I think from a legal
19 perspective it's best that it get addressed purely
20 assuming all the facts are true, because the real
21 question is, assuming all the facts are true, does this
22 state a claim given the First Amendment issues
23 implicated thereby?

24 THE COURT: Well, here's a real good
25 question, I think. Why don't you just withdraw your

1 motion to dismiss and frame this as a motion for summary
2 judgment? This is a pure traditional motion for summary
3 judgment, not a no-evidence motion. It's a traditional
4 motion for summary judgment that says assuming
5 everything in their pleadings is true, they cannot as a
6 matter of law proceed on this theory. That's a motion
7 for summary judgment. Why do we have this expedited --
8 the purpose of the anti-SLAPP motions are to stop
9 discovery, to protect people on their First Amendment
10 rights and not have to go through motions for summary
11 judgment, not have to do any -- well, not have to do any
12 discovery really other than specified unlimited
13 discovery. But you've just basically made a concession
14 that said we didn't need to go through all we've gone
15 through in the last two or three months, and I
16 appreciate it; let's just go to a dispositive motion as
17 a matter of law. That is not an anti-SLAPP motion.
18 That's a motion for summary judgment. Do you see what I
19 mean?

20 MR. BARNES: Yes, Your Honor. I see it as
21 like in the federal system a 12(b)(6) motion to dismiss.

22 THE COURT: But we don't have those.

23 MR. BARNES: We don't, that's correct.

24 THE COURT: Well, actually, we have a
25 newer sort of version, but that's not what you're

1 saying. You're basically saying this is a traditional
2 motion for summary judgment; as a matter of law, they
3 cannot proceed. The very argument Mr. Enoch made when I
4 granted some discovery, he said you shouldn't give
5 discovery because as a matter of law they can't proceed.
6 I wish I had thought of this question then or had it
7 suggested to me, but it seems like a pure simple motion
8 for summary judgment; let's just tee this up and
9 everybody can brief it and let's kind of give ourselves
10 a break.

11 MR. BARNES: I see it as a pure motion to
12 dismiss. In other words, I see it not as a summary
13 judgment motion but -- in other words, I see summary
14 judgment as we got through all the discovery, does the
15 evidence support whether there's a dispute as --

16 THE COURT: No, but you could even do a
17 motion for summary judgment without any discovery. You
18 can come in early on -- not a no-evidence motion, but
19 you can come in early on with a traditional motion -- I
20 get them all the time -- as a matter of law, we will
21 assume everything the plaintiff alleges in their
22 pleadings is true, what you just said today, as a matter
23 of law they cannot proceed with this case; we want a
24 final dispositive judgment dismissing the case as a
25 matter of law pursuant to this motion for summary

1 judgment. You could have done that instead. And we've
2 put everybody under the gun with all this discovery and
3 made everybody's life difficult, and now we're going to
4 really simplify it. And I appreciate that, but why not
5 just have an MSJ hearing at your leisure?

6 MR. BARNES: Because I believe that TCPA
7 is well suited to tee these kind of issues up. In other
8 words, I think it was designed for it. We have the
9 interlocutory appeal, so you get to go up and figure
10 out, let's have all the courts look at this just as a
11 matter of law.

12 THE COURT: Well, that's a good point.
13 You don't get an interloc appeal if your MSJ is denied.

14 MR. BARNES: Right.

15 THE COURT: And that's your argument. Now
16 you're going to trial on this case that you think even
17 when they -- even if they prove the case after trial, as
18 a matter of law they can't get a judgment, so --

19 MR. BARNES: Right. I want the appellate
20 food chain to -- well, I want everybody to make an
21 adjudication.

22 THE COURT: That's a good observation,
23 just for the sake of judicial economy, should we try the
24 case if as a matter of law they can't proceed on this.

25 MR. BARNES: Exactly, Your Honor.

1 THE COURT: Okay.

2 MR. BARNES: That's my goal.

3 THE COURT: All right. Good answer.

4 MR. BARNES: Thank you, Your Honor.

5 THE COURT: Sure. Anything else your
6 table wants to say?

7 MR. YOUNG: No, sir. The Court already
8 covered everything and read everything, so I'm done.
9 Thank you.

10 THE COURT: Okay. Thank you.

11 Back to you. Kind of an O. Henry ending
12 here.

13 MR. BANKSTON: Well, yeah, everything's --
14 yeah, the situation's changed quite a bit in the last
15 20 minutes. What I'll say, Your Honor, is that we hear
16 their concession. If what I'm hearing is they're going
17 to bring a pure motion of law and that the facts as
18 alleged by plaintiff are not going to be contested and
19 that this isn't going to be a factual motion, this is
20 going to be a pure -- we're going to have a law school
21 exam kind of motion, that we're just going to talk about
22 the law, hearing that, that solves a lot of my problem.
23 It really does. And with that, I think a big portion of
24 my component of my sanctions motion can go.

25 I do believe that that would be -- that

1 solution would satisfy the same things that I'm asking
2 for you in this higher sanction, and so I don't -- I
3 think this could cure the problem without striking the
4 motion. So I'm on a -- if I hear that concession and
5 that's what's happening and that we're not going to have
6 to be dealing with this huge amount of discovery we had
7 when responding to this motion, I think that eliminates
8 the prejudice I talked to you about. So for that part,
9 that component of my sanctions motion, I think they've
10 effectively taken that off the table.

11 THE COURT: I'm not understanding you're
12 saying, that component. Your sanctions motion was to
13 strike or not to strike the motion to dismiss.

14 MR. BANKSTON: Actually, there's one more
15 thing I requested.

16 THE COURT: Okay.

17 MR. BANKSTON: And that's attorney's fees.

18 THE COURT: Ah.

19 MR. BANKSTON: And you have to grant them.
20 The statute doesn't give you any leeway on this. Now,
21 what you grant --

22 THE COURT: I'm sorry. I have to grant
23 attorney's fees on the anti-SLAPP motion.

24 MR. BANKSTON: I was actually talking
25 about the motion for sanctions under 215, but yes, you

1 are correct that if they prevail on their SLAPP motion
2 you would have to grant fees, and permissibly if I was
3 to win. But my affidavit in that motion sets forth the
4 fees that we've spent while doing this discovery. And
5 what I'm hearing now is that that was entirely
6 pointless. None of that that we just did for the past
7 two months is going to have any relationship to what we
8 do on May 2nd, and I have had to do all of that.

9 THE COURT: Well, but it's going to --
10 ultimately your position is this case should not be
11 dismissed on May 2nd; I'm going to need discovery.
12 You've just had, I guess -- in light of the dramatic
13 change of strategy on the part of the defendants today,
14 you just had an open window into discovery early in the
15 case that you otherwise wouldn't have had if they had
16 taken this position two months ago. So all of that
17 discovery inures to your benefit because you needed all
18 that anyway, right?

19 MR. BANKSTON: No, that's well taken.
20 Right. I do benefit down the road from that discovery.

21 THE COURT: Yes.

22 MR. BANKSTON: What I did there is
23 somewhat beneficial to me.

24 THE COURT: So you might not have needed
25 to draft this motion for sanctions. You might not have

1 needed to come here to Austin today. But other than
2 that, everything you got was beneficial to you in the
3 case-in-chief.

4 MR. BANKSTON: And I think that's really
5 well taken. But at the same time, when weighing that
6 and understanding that, what we did over the past two
7 months on this incredibly compressed scale has caused us
8 to work in a way that we would not normally work.

9 THE COURT: Well, maybe you could argue I
10 get overtime hours as an attorney; I get time and a half
11 for my hourly rate. But other than that, it seems like
12 all the work you did in the last two months is stuff
13 you're going to have to do someday anyway. Do you see
14 my point?

15 MR. BANKSTON: I think a lot of that is,
16 but I don't think all of it is. I think there were
17 things that were brought up in the motion to dismiss
18 that are now gone and off the table that I had to
19 develop discovery on that I wouldn't have really
20 necessarily gone too deep into in any form. Honestly, I
21 don't care who runs InfoWars, LLC. The only reason I'm
22 having to do that is because I've got to meet the
23 prima facie case that they're saying that I've got to
24 prove that InfoWars, LLC is involved.

25 THE COURT: No, that's actually not true.

1 If you're going to get a judgment against InfoWars
2 ultimately, you're going to have to show that InfoWars
3 was responsible in part or had some control over the
4 communications that went out that intentionally
5 inflicted emotional distress. So to impose liability on
6 any defendant, you have to show their responsibility for
7 the harm done, for the actions taken and the harm done.
8 So ultimately you do have to prove that. So ultimately
9 you do need that discovery. On any respondeat superior
10 case I ever tried I had to prove that, so you need that
11 discovery.

12 MR. BANKSTON: I would remind -- one thing
13 I would remind is that I didn't need it in *Heslin*
14 because I didn't need to do discovery because I got
15 evidence in the public domain that met my burden.

16 THE COURT: Okay.

17 MR. BANKSTON: They contested that.

18 THE COURT: Okay.

19 MR. BANKSTON: When that got thrown in to
20 contest, all of a sudden I've got to start deposing
21 people and stuff like that. That may have happened down
22 the road. I don't know. I'm not going to push hard on
23 that, right? All I'm saying is that there were efforts
24 undertaken in discovery that was an unusual situation.
25 Not all of it is -- there were components of it that are

1 totally keyed to the motion to dismiss. And again, I
2 think you're absolutely right; you can't look at those
3 fees and go, yep, all of those are good because, you're
4 right, some of that is beneficial. Some of that would
5 be duplicated later anyway, so I believe that. But I
6 think there has to be something awarded in terms of what
7 we've had to do.

8 I think you're right; the motion -- what
9 we did here today, I think there's no question, right,
10 that there has to be fees for that. And, you know, if
11 you want to look at that affidavit and see if, you know,
12 there are some things in there and use your judgment of
13 saying, no, I think you would have had to already do
14 that, I think that would have already benefitted you,
15 you know, and you say, no, scratch that fee off, but I'm
16 just letting you know that affidavit is there for your
17 review.

18 THE COURT: Well, no, I'm doing it right
19 now.

20 MR. BANKSTON: Okay.

21 THE COURT: I'm not going to have time to
22 go back and parse through your attorney's fees --

23 MR. BANKSTON: Okay.

24 THE COURT: -- hour by hour and decide
25 what I think should be awarded or not. I'm sorry. I

1 have not been focused on your attorney's fees. I've
2 been focused really on the merits. But now the last
3 thing you want today -- and I understand that and
4 respect your right to do that -- is you want me to award
5 attorney's fees today for this motion for sanctions
6 motion, right?

7 MR. BANKSTON: Correct.

8 THE COURT: And what in your affidavit
9 segregates, which is the word they use on attorney's
10 fees applications, the fees that are uniquely
11 attributable to the effort made for this motion today as
12 opposed to discovery that you're going to need anyway
13 for which I think you've just conceded I don't get
14 attorney's fees because I need that anyway in the
15 case --

16 MR. BANKSTON: Right.

17 THE COURT: How am I -- what is the
18 attorney's fee for today and the filing of the motion
19 that you're now arguing was unnecessary, and what can I
20 glean from the affidavit, very quickly, that would say,
21 oh, that discrete work would never have needed to be
22 done if it wasn't for their failure to make the
23 discovery when they made it?

24 MR. BANKSTON: Absolutely. The legal work
25 is all itemized, and I'm just going to give you the one.

1 THE COURT: Well, you have to do it right
2 now.

3 MR. BANKSTON: Yeah, I'm just going to
4 give you the one.

5 THE COURT: Let me open your motion. It
6 was filed --

7 MR. BANKSTON: There were --

8 THE COURT: Hang on. Let me look at the
9 affidavit on my screen.

10 MR. BANKSTON: It's Exhibit 12.

11 THE COURT: Any idea what page number that
12 would be in your 304 pages that were filed?

13 MR. BANKSTON: It's going to be the very
14 last thing.

15 THE COURT: The very last thing. Oh,
16 that's easy.

17 MR. BANKSTON: It's the last exhibit.

18 MS. HOGAN: It's not, though, because of
19 the way it's --

20 MR. BANKSTON: Oh.

21 THE COURT: That's okay.

22 MS. HOGAN: Page 25.

23 THE COURT: It's not. That's a
24 transcript. That's a transcript. I'm up to Page 27 and
25 it's still a transcript.

1 MS. HOGAN: No, I'm sorry, on the reply,
2 not on the motion.

3 THE COURT: I'm looking at the wrong
4 document. This was attached to the reply you filed
5 yesterday.

6 MR. BANKSTON: Correct, Your Honor, yes.

7 THE COURT: Yeah. Well, that's why I
8 didn't -- and that's another 339 pages. Let me -- I
9 read the reply, but, of course, I couldn't read 339
10 pages last night. Well, I guess I could have, but it's
11 probably better to sleep a little.

12 There we go. Got it. Let me look at
13 that. I don't know how many pages it is. What page do
14 I look at to try to glean --

15 MR. BANKSTON: That's the only one I want
16 to show you right now, is if you go to Page 3, the very
17 bottom of Page 3.

18 THE COURT: Okay.

19 MR. BANKSTON: And you'll see there the
20 last entry is plaintiff's motion for sanctions for
21 discovery abuse.

22 THE COURT: I spent 16 hours preparing
23 plaintiff's motion. The reasonable value of this legal
24 work is \$7200. That's it, right?

25 MR. BANKSTON: That's for that one, yes,

1 Your Honor. And I think that's the one that's
2 unquestionable. I would suggest that --

3 THE COURT: So you're asking me to award
4 \$7200 today for having to file this motion that given
5 their change of position today was not necessary because
6 if they had done a Rule 11 stipulation with you doing
7 exactly what they did in court today, this would not
8 have been necessary.

9 MR. BANKSTON: Exactly.

10 THE COURT: That's your argument.

11 MR. BANKSTON: And actually, the figure
12 wasn't -- it hadn't happened at the time of this
13 affidavit, but now I've spent two hours here today, and
14 so that would bring it up to 8100, so I would add \$900.

15 THE COURT: Let me calculate that rate.
16 What is that?

17 MR. BANKSTON: There are a couple of other
18 things I want to talk to you about, but I think that's
19 the one that's concrete.

20 THE COURT: I'm sorry. 16 hours. So what
21 is your rate? 16 times what gets you to --

22 MR. BANKSTON: 450.

23 THE COURT: I'm sorry?

24 MR. BANKSTON: 450.

25 THE COURT: Okay.

1 MR. BANKSTON: So there's that, and that
2 would be our request. The other thing, Your Honor, is
3 I'm on board with you 100 percent; any time I'm doing
4 discovery, reviewing discovery, taking depositions,
5 that's no cost. But what does kind of -- I wonder about
6 motion for expedited discovery, motion to compel under
7 reporter's privilege, a response to an extension of
8 time. All of these pleadings would never have happened
9 if we weren't doing the discovery.

10 THE COURT: Well, but you've
11 accomplished --

12 MR. BANKSTON: Now, if that is -- I think
13 I'd leave that up to you whether you think that's a
14 nexus enough to what's going on here.

15 THE COURT: Well, maybe, but you've
16 accomplished a lot by getting them to make this
17 concession today. By getting them to make this a pure
18 legal argument, you have simplified your life
19 tremendously for May 2nd.

20 MR. BANKSTON: I think you're right about
21 that.

22 THE COURT: And, you know, you should be
23 pleased about that. I'm sure opposing counsel
24 congratulates you for that. And, you know, he has
25 steered the ship in a dramatically new direction since

1 he became captain apparently.

2 MR. BANKSTON: Your Honor, I think you're
3 right. So with that being said, then I will say our
4 only request in terms of fees under 215 is for this
5 motion and for this appearance.

6 THE COURT: All right. I'll do one of my
7 favorite things now. I feel like I'm going to be a
8 mediator for a minute here. Let me see if I can talk to
9 the other side about that. Thank you.

10 MR. BANKSTON: Sure.

11 THE COURT: I think that's a fair argument
12 that this is a dramatic change today and I respect that.
13 New counsel is taking charge as captain of the ship and
14 saying we need to stop this direction, let's just put it
15 on this course, make this a pure question of law, I
16 think we win or lose on that, and that certainly -- I
17 appreciate it because it simplifies my life
18 tremendously, and it's interesting. It's a legal
19 argument that's really, really interesting, and so thank
20 you for that.

21 Having said that, that's new, and he
22 wouldn't have spent 16 hours drafting this motion for
23 sanctions if you had taken over sooner and had conveyed
24 to the plaintiff's side you need not worry about your
25 sanctions because we're just going to make this a pure

1 question of law on May 2nd. And because he didn't know
2 that until today, none of us did, he spent about \$8,000
3 worth of attorney time to do what we just did.

4 Why shouldn't he get an award of \$8,000 in
5 attorney's fees for having to file this motion and come
6 down to get everybody on the other side to decide how to
7 redirect the ship?

8 MR. BARNES: Yes, Your Honor. I don't
9 think it would be an obligation of my client because
10 these were legal decisions that were being made, so I'll
11 pay it. I'm happy to write a check for him and cover
12 the 8100 right out of my own pocket because it was my
13 decision to try to figure all this out, protect
14 everybody as best as possible, do it as expedited as I
15 could. But I understand it did take him time, and so
16 for that reason I'm happy to pay it myself, Your Honor,
17 out of my own pocket. But the client didn't do anything
18 to delay discovery or delay documents or do anything to
19 do this. This was the lawyers making decisions.

20 THE COURT: Well, I am supposed to decide
21 that, who's supposed to pay the fees on discovery,
22 you know. And that's always a vexing problem because to
23 answer that question you have to get into
24 attorney-client privilege --

25 MR. BARNES: Precisely.

1 THE COURT: -- to know who made this more
2 difficult than it needed to be. I've always wondered,
3 how am I supposed to do that when I can't ask those
4 questions? But once again, you've kind of made it easy.
5 I should award attorney's fees -- or you concede that
6 the argument is logical for attorney's fees, and because
7 it is logical, if anyone should pay, it should be me
8 personally, and so simply assess \$8,000 in attorney's
9 fees against you personally.

10 MR. BARNES: Yes, Your Honor.

11 THE COURT: Is that what you're saying?

12 MR. BARNES: Yeah. What I would request
13 is that I be allowed to pay it without it being an
14 order. The only reason for that is it will then be
15 cited in Connecticut and I'll have to explain what
16 happened, and I don't want there to be a
17 misunderstanding of the order that the Court made a
18 determination that I acted in bad faith or anything like
19 that. That's my only reason.

20 THE COURT: I understand that. And so --
21 well, we'll chat about who's going to draft that order
22 in a minute, but you don't want it to be used as a sword
23 suggesting that you did something in bad faith. This is
24 really a dramatic strategic change to make this a pure
25 question of law and that makes it much more efficient

1 for everybody.

2 MR. BARNES: Yes, Your Honor.

3 THE COURT: All right. Thank you. Does
4 that conclude our record for today?

5 MR. BANKSTON: Yes, Your Honor.

6 MR. BARNES: Yes, Your Honor.

7 THE COURT: All right. We're now off the
8 record.

9 *(Discussion off the record)*

10 THE COURT: We're back on the record.
11 You've had a collegial discussion about attorney's fees
12 in order to satisfy plaintiff's request for attorney's
13 fees. I understand you've reached a Rule 11 agreement
14 obviating the need -- I've used that word a lot today
15 too, haven't I -- for the Court to issue an order. You
16 may make your Rule 11 statement.

17 MR. BARNES: Thank you, Your Honor.
18 Attorney Robert Barnes will pay 8100 to plaintiff's
19 counsel within ten days as part of our Rule 11 agreement
20 to satisfy that issue.

21 MR. BANKSTON: Plaintiff's counsel is in
22 agreement with the offer. I think we're good.

23 THE COURT: Is that everything we need for
24 the record?

25 MR. BANKSTON: I think so, Your Honor.

1 MR. BARNES: That's all, Your Honor.

2 Thank you.

3 THE COURT: All right. That concludes our
4 record. Thank you both very much.

5 *(Court adjourned)*

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REPORTER'S CERTIFICATE

THE STATE OF TEXAS)

COUNTY OF TRAVIS)

I, Chavela V. Crain, Official Court Reporter in and for the 53rd District Court of Travis County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered in evidence by the respective parties.

WITNESS MY OFFICIAL HAND this the 5th day of April, 2019.

/s/ Chavela V. Crain

Chavela V. Crain, CSR, RDR, RMR, CRR
Texas CSR 3064

Expiration Date: 12/31/2019

Official Court Reporter

53rd District Court

Travis County, Texas

P.O. Box 1748

Austin, Texas 78767

(512) 854-9322

*